



Senate

General Assembly

File No. 561

February Session, 2016

Substitute Senate Bill No. 429

Senate, April 7, 2016

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING SERVICE OF RESTRAINING ORDERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-15 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) Any family or household member, as defined in section 46b-38a,
4 who has been subjected to a continuous threat of present physical pain
5 or physical injury, stalking or a pattern of threatening, including, but
6 not limited to, a pattern of threatening, as described in section 53a-62,
7 by another family or household member may make an application to
8 the Superior Court for relief under this section.

9 (b) The application form shall allow the applicant, at the applicant's
10 option, to indicate whether, to the best of the applicant's knowledge,
11 the respondent holds a permit to carry a pistol or revolver, an
12 eligibility certificate for a pistol or revolver, a long gun eligibility
13 certificate or an ammunition certificate or possesses one or more
14 firearms or ammunition. The application shall be accompanied by an

15 affidavit made under oath which includes a brief statement of the
16 conditions from which relief is sought. Upon receipt of the application
17 the court shall order that a hearing on the application be held not later
18 than fourteen days from the date of the order. The court, in its
19 discretion, may make such orders as it deems appropriate for the
20 protection of the applicant and such dependent children or other
21 persons as the court sees fit. In making such orders, the court, in its
22 discretion, may consider relevant court records if the records are
23 available to the public from a clerk of the Superior Court or on the
24 Judicial Branch's Internet web site. Such orders may include temporary
25 child custody or visitation rights, and such relief may include, but is
26 not limited to, an order enjoining the respondent from (1) imposing
27 any restraint upon the person or liberty of the applicant; (2)
28 threatening, harassing, assaulting, molesting, sexually assaulting or
29 attacking the applicant; or (3) entering the family dwelling or the
30 dwelling of the applicant. Such order may include provisions
31 necessary to protect any animal owned or kept by the applicant
32 including, but not limited to, an order enjoining the respondent from
33 injuring or threatening to injure such animal. If an applicant alleges an
34 immediate and present physical danger to the applicant, the court may
35 issue an ex parte order granting such relief as it deems appropriate. If a
36 postponement of a hearing on the application is requested by either
37 party and granted, the ex parte order shall not be continued except
38 upon agreement of the parties or by order of the court for good cause
39 shown. If a hearing on the application is scheduled or an ex parte order
40 is granted and the court is closed on the scheduled hearing date, the
41 hearing shall be held on the next day the court is open and any such ex
42 parte order shall remain in effect until the date of such hearing.

43 (c) Any ex parte restraining order entered under subsection (b) of
44 this section in which the applicant and respondent are spouses, or
45 persons who have a dependent child or children in common and who
46 live together, may include, if no order exists, and if necessary to
47 maintain the safety and basic needs of the applicant or the dependent
48 child or children in common of the applicant and respondent, in
49 addition to any orders authorized under subsection (b) of this section,

50 any of the following: (1) An order prohibiting the respondent from (A)
51 taking any action that could result in the termination of any necessary
52 utility services or necessary services related to the family dwelling or
53 the dwelling of the applicant, (B) taking any action that could result in
54 the cancellation, change of coverage or change of beneficiary of any
55 health, automobile or homeowners insurance policy to the detriment
56 of the applicant or the dependent child or children in common of the
57 applicant and respondent, or (C) transferring, encumbering, concealing
58 or disposing of specified property owned or leased by the applicant; or
59 (2) an order providing the applicant with temporary possession of an
60 automobile, checkbook, documentation of health, automobile or
61 homeowners insurance, a document needed for purposes of proving
62 identity, a key or other necessary specified personal effects.

63 (d) At the hearing on any application under this section, if the court
64 grants relief pursuant to subsection (b) of this section and the applicant
65 and respondent are spouses, or persons who have a dependent child or
66 children in common and who live together, and if necessary to
67 maintain the safety and basic needs of the applicant or the dependent
68 child or children in common of the applicant and respondent, any
69 orders entered by the court may include, in addition to the orders
70 authorized under subsection (b) of this section, any of the following:
71 (1) An order prohibiting the respondent from (A) taking any action
72 that could result in the termination of any necessary utility services or
73 services related to the family dwelling or the dwelling of the applicant,
74 (B) taking any action that could result in the cancellation, change of
75 coverage or change of beneficiary of any health, automobile or
76 homeowners insurance policy to the detriment of the applicant or the
77 dependent child or children in common of the applicant and
78 respondent, or (C) transferring, encumbering, concealing or disposing
79 of specified property owned or leased by the applicant; (2) an order
80 providing the applicant with temporary possession of an automobile,
81 checkbook, documentation of health, automobile or homeowners
82 insurance, a document needed for purposes of proving identity, a key
83 or other necessary specified personal effects; or (3) an order that the
84 respondent: (A) Make rent or mortgage payments on the family

85 dwelling or the dwelling of the applicant and the dependent child or
86 children in common of the applicant and respondent, (B) maintain
87 utility services or other necessary services related to the family
88 dwelling or the dwelling of the applicant and the dependent child or
89 children in common of the applicant and respondent, (C) maintain all
90 existing health, automobile or homeowners insurance coverage
91 without change in coverage or beneficiary designation, or (D) provide
92 financial support for the benefit of any dependent child or children in
93 common of the applicant and the respondent, provided the respondent
94 has a legal duty to support such child or children and the ability to
95 pay. The court shall not enter any order of financial support without
96 sufficient evidence as to the ability to pay, including, but not limited
97 to, financial affidavits. If at the hearing no order is entered under this
98 subsection or subsection (c) of this section, no such order may be
99 entered thereafter pursuant to this section. Any order entered pursuant
100 to this subsection shall not be subject to modification and shall expire
101 one hundred twenty days after the date of issuance or upon issuance
102 of a superseding order, whichever occurs first. Any amounts not paid
103 or collected under this subsection or subsection (c) of this section may
104 be preserved and collectible in an action for dissolution of marriage,
105 custody, paternity or support.

106 (e) Every order of the court made in accordance with this section
107 shall contain the following language: (1) "This order may be extended
108 by the court beyond one year. In accordance with section 53a-107 of
109 the Connecticut general statutes, entering or remaining in a building or
110 any other premises in violation of this order constitutes criminal
111 trespass in the first degree. This is a criminal offense punishable by a
112 term of imprisonment of not more than one year, a fine of not more
113 than two thousand dollars or both."; and (2) "In accordance with
114 section 53a-223b of the Connecticut general statutes, any violation of
115 subparagraph (A) or (B) of subdivision (2) of subsection (a) of section
116 53a-223b constitutes criminal violation of a restraining order which is
117 punishable by a term of imprisonment of not more than five years, a
118 fine of not more than five thousand dollars, or both. Additionally, any
119 violation of subparagraph (C) or (D) of subdivision (2) of subsection (a)

120 of section 53a-223b constitutes criminal violation of a restraining order
121 which is punishable by a term of imprisonment of not more than ten
122 years, a fine of not more than ten thousand dollars, or both."

123 (f) No order of the court shall exceed one year, except that an order
124 may be extended by the court upon motion of the applicant for such
125 additional time as the court deems necessary. If the respondent has not
126 appeared upon the initial application, service of a motion to extend an
127 order may be made by first-class mail directed to the respondent at the
128 respondent's last-known address.

129 (g) The applicant shall cause notice of the hearing pursuant to
130 subsection (b) of this section and a copy of the application and the
131 applicant's affidavit and of any ex parte order issued pursuant to
132 subsection (b) of this section to be served on the respondent not less
133 than five days before the hearing. [The cost of such service] If the
134 application indicates that the respondent holds a permit to carry a
135 pistol or revolver, an eligibility certificate for a pistol or revolver, a
136 long gun eligibility certificate or an ammunition certificate, or
137 possesses ammunition or one or more firearms, the applicant may
138 request that service of process be executed by a police officer in lieu of
139 service by a proper officer. When service is to be executed by a police
140 officer, the clerk of the court shall send, by facsimile or other means,
141 the application, the applicant's affidavit, the ex parte order and the
142 notice of the hearing to the law enforcement agency for the town in
143 which the respondent resides not later than two hours after the
144 issuance of such order. The law enforcement agency shall receive all
145 process directed to such law enforcement agency and may seek
146 assistance from another law enforcement agency in executing service
147 of such process. A police officer of the law enforcement agency shall
148 promptly execute such service and make true return thereof. When
149 service is executed by a police officer, the information contained in the
150 application or applicant's affidavit shall not alone constitute grounds
151 for an arrest under subsection (a) of section 46b-38b. A photographic
152 copy, a micrographic copy or other electronic image that clearly and
153 accurately copies the application, the applicant's affidavit, any ex parte

154 order and the notice of hearing shall be permitted when executing
155 service under this section. All costs incurred in executing service of
156 process under this section shall be paid for by the Judicial Branch.
157 Upon the granting of an ex parte order, the clerk of the court shall
158 provide two copies of the order to the applicant. Upon the granting of
159 an order after notice and hearing, the clerk of the court shall provide
160 two copies of the order to the applicant and a copy to the respondent.
161 Every order of the court made in accordance with this section after
162 notice and hearing shall be accompanied by a notification that is
163 consistent with the full faith and credit provisions set forth in 18 USC
164 2265(a), as amended from time to time. Immediately after making
165 service on the respondent, the proper officer or police officer shall send
166 or cause to be sent, by facsimile or other means, a copy of the
167 application, or the information contained in such application, stating
168 the date and time the respondent was served, to the law enforcement
169 agency or agencies for the town in which the applicant resides, the
170 town in which the applicant is employed and the town in which the
171 respondent resides. The clerk of the court shall send, by facsimile or
172 other means, a copy of any ex parte order and of any order after notice
173 and hearing, or the information contained in any such order, to the law
174 enforcement agency or agencies for the town in which the applicant
175 resides, the town in which the applicant is employed and the town in
176 which the respondent resides, within forty-eight hours of the issuance
177 of such order. If the victim is enrolled in a public or private elementary
178 or secondary school, including a technical high school, or an institution
179 of higher education, as defined in section 10a-55, the clerk of the court
180 shall, upon the request of the victim, send, by facsimile or other means,
181 a copy of such ex parte order or of any order after notice and hearing,
182 or the information contained in any such order, to such school or
183 institution of higher education, the president of any institution of
184 higher education at which the victim is enrolled and the special police
185 force established pursuant to section 10a-156b, if any, at the institution
186 of higher education at which the victim is enrolled.

187 (h) A caretaker who is providing shelter in his or her residence to a
188 person sixty years or older shall not be enjoined from the full use and

189 enjoyment of his or her home and property. The Superior Court may
190 make any other appropriate order under the provisions of this section.

191 (i) When a motion for contempt is filed for violation of a restraining
192 order, there shall be an expedited hearing. Such hearing shall be held
193 within five court days of service of the motion on the respondent,
194 provided service on the respondent is made not less than twenty-four
195 hours before the hearing. If the court finds the respondent in contempt
196 for violation of an order, the court may impose such sanctions as the
197 court deems appropriate.

198 (j) An action under this section shall not preclude the applicant from
199 seeking any other civil or criminal relief.

200 (k) For purposes of this section, "police officer" means a state police
201 officer or a sworn member of a municipal police department, and "law
202 enforcement agency" means the Division of State Police within the
203 Department of Emergency Services and Public Protection or any
204 municipal police department.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	46b-15

Section 1	October 1, 2016	46b-15
-----------	-----------------	--------

Statement of Legislative Commissioners:

In Section 1(g), in the new language minor revisions in punctuation and phraseology were made for accuracy and clarity.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Judicial Dept.	GF - Potential Cost/Savings	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill allows certain civil restraining orders to be served by a state police or municipal police officer, but requires the Judicial Department to pay the costs incurred when a police officer executes service. Currently service is executed by state marshals and compensated by the Judicial Department. To the extent that police officers do not incur costs to execute service, the bill results in potential savings to the Judicial Department of \$53 for each service. However if police officers incur costs of greater than \$53 for each service, the bill results in a potential cost to the Judicial Department.

The bill makes additional changes to civil restraining order application forms, which do not result in a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 429*****AN ACT CONCERNING SERVICE OF RESTRAINING ORDERS.*****SUMMARY:**

This bill makes changes to laws that relate to the service of civil restraining orders (see BACKGROUND). It:

1. revises the civil restraining order application form to allow applicants to indicate whether the accused holds a firearm eligibility certificate or an ammunition certificate;
2. allows the applicant to request that a police officer, instead of a state marshal or other proper officer, serve process when an application indicates that the respondent possesses firearms or ammunition or holds a gun permit or other credential that indicates he or she may have access to firearms or ammunition; and
3. specifies that an applicant who provides information about firearms and ammunition does so to the best of his or her knowledge.

EFFECTIVE DATE: October 1, 2016

CIVIL RESTRAINING ORDERS***Application***

Under current law, a civil restraining order application form must allow an applicant, at his or her option, to indicate whether the respondent holds a gun permit or possesses firearms or ammunition. The bill requires that this be done to the best of the applicant's knowledge. Under the bill, the application form must also allow the applicant to indicate whether, to the best of his or her knowledge, the

respondent has a handgun eligibility certificate, a long gun eligibility certificate, or an ammunition certificate.

Service of Process by Police Officer

Under existing law, proper officers, such as state marshals and constables, are allowed to serve process. The bill allows an applicant to request that process be served by a police officer if a restraining order application indicates that the respondent possesses firearms or ammunition or holds a gun permit, a handgun eligibility certificate, a long gun eligibility certificate, or an ammunition certificate.

In such a case, the court must send, by fax or other means, the application, applicant's affidavit, ex parte order (i.e., an order issued without a hearing), and the hearing notice to the law enforcement agency (i.e., the State Police or municipal police department) for the town in which the respondent lives. The court must do so, within two hours after the issuance of the ex parte order.

The law enforcement agency must receive all process directed to it and may seek assistance from another law enforcement agency to execute service of such process. A police officer from the agency that received process must promptly serve the respondent and return service to the court. The officer is allowed to use a clear and accurate copy of the application, applicant's affidavit, ex parte order, and hearing notice.

When service is executed by a police officer, the information contained in the application or applicant's affidavit by itself does not constitute grounds for an arrest for a family violence crime.

As is the case under existing law for proper officers, the Judicial Branch must pay the costs incurred when a police officer executes service of process.

BACKGROUND

Civil Restraining Order

A family or household member may apply for a civil restraining

order for relief from physical abuse, stalking, or a pattern of threatening from another family or household member (CGS § 46b-15).

Related Bills

HB 5054 and sHB 5623, reported favorably by the Judiciary Committee, revise the civil restraining order application form to allow an applicant to indicate whether the respondent has (1) an eligibility certificate for firearm or ammunition, or (2) a job in which the ability to carry a firearm is an essential requirement.

HB 5597, reported favorably by the Judiciary Committee, revises the civil restraining order application form to allow an applicant to indicate whether (1) the respondent has an eligibility certificate for firearm or ammunition and (2) the applicant has probable cause to believe that a family or household member poses a risk of imminent personal injury to the applicant.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 25 Nay 17 (03/21/2016)